

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CELLTRACE LLC,	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION NO. 6:09-cv-294
v.	§	
	§	JURY TRIAL DEMANDED
AT&T INC., et al ,	§	
	§	
Defendants.	§	

**STIPULATION OF DISMISSAL WITHOUT
PREJUDICE AS TO DEFENDANT AT&T INC.**

Plaintiff Celltrace LLC (“Celltrace”) and Defendants AT&T Inc. and AT&T Mobility LLC submit the following Stipulation of Dismissal Without Prejudice as to Defendant AT&T Inc. and in support thereof state:

1. On July 8, 2009, Plaintiff Celltrace filed suit against AT&T Inc. (“AT&T Inc.”), AT&T Mobility LLC f/k/a Cingular Wireless LLC (“AT&T Mobility”), and others for infringement of U.S. Patent Nos. 6,011,976 and 7,551,933.
2. AT&T Inc. represents and warrants that:
 - a. AT&T Inc. is a holding company that has no employees, sales representatives, or distributors. Furthermore, AT&T Inc. does not instruct, direct, or control the activities of its subsidiaries (or any other entity) relevant to operations or design of any messaging systems or services or cellular telephone messaging features and functionality.
 - b. AT&T Inc. and AT&T Mobility agree that for purposes of discovery in

this case, documents and information in the possession, custody or control of AT&T Inc., or any of AT&T Inc.'s subsidiaries are deemed to also be in the possession, custody and control of AT&T Mobility. AT&T Mobility will not object to a request for deposition on the grounds that the prospective deponent is an employee of AT&T Inc. or any of its subsidiaries (though nothing in this stipulation prevents AT&T Mobility from objecting to a deposition on other grounds).

- c. AT&T Mobility is the proper party to defend against the allegations made in this patent infringement lawsuit. Furthermore, AT&T Mobility, or any assignee of AT&T Mobility is able to satisfy any judgment against it in this case. AT&T Inc. and AT&T Mobility each warrant and represent that they will not take any action that will cause AT&T Mobility to be unable to fully satisfy any judgment entered in this case. AT&T Inc. shall be deemed as guarantor of payment of any final judgment against AT&T Mobility awarding damages to the plaintiff.
3. Celltrace expressly does not stipulate or agree to any of the foregoing facts, and reserves its rights to dispute any of the foregoing factual representations with evidence to the contrary.
4. In reliance upon the representations and warranties made in paragraphs 2(a) – 2(c) above, Celltrace agrees to dismiss AT&T Inc. without prejudice as allowed under Rule 41(a)(2) of the Federal Rules of Civil Procedure.
5. Celltrace has not released, and nothing in this Stipulation should be construed as a release or discharge of, any claim Celltrace has or may have in the future against

any Defendant named in this action or any other asserted infringer of the patents-in-suit. All other rights have been and are expressly reserved.

Accordingly, Celltrace and AT&T Inc. request that the Court enter the attached order dismissing AT&T Inc. without prejudice.

Dated: October 5, 2010.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANTS
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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of October, 2010, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Texas, Tyler Division, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Kevin Cadwell